

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment ) NOTICE OF PUBLIC HEARING ON  
of ARM 17.30.201 pertaining to ) PROPOSED AMENDMENT  
water quality permit and )  
authorization fees ) (WATER QUALITY)

TO: All Concerned Persons

1. On January 3, 2002 at 10:00 a.m. the Board of Environmental Review will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule pertaining to water quality permit and authorization fees.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., December 17, to advise us of the nature of the accommodation you need. Please contact the Board at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386, or email the Board Secretary at "ber@state.mt.us".

3. The rule proposed to be amended reads as follows, stricken matter interlined, new matter underlined:

17.30.201 PERMIT APPLICATION, DEGRADATION AUTHORIZATION, AND ANNUAL PERMIT FEES (1) The purpose of this rule is to establish fee schedules for use in determining fees to be paid to the department under 75-5-516, MCA. Fees to be paid are the sum of the fees in the applicable schedules. There are ~~3~~ three types of fees imposed under this rule:

(a) a permit application fee, (Schedule I);

(b) a degradation authorization fee, (Schedule II); and

(c) an annual permit fee (Schedule III).

(2) ~~(a)~~ A person who applies for a permit, certificate, license, notice of intent or other authorization required by rule under 75-5-201, 75-5-301 or 75-5-401, MCA, or for a modification or renewal of any of these authorizations, shall pay to the department a permit application fee as determined under ~~(3)(a)~~ (5) and ~~(c)~~ of this rule.

~~(b)~~ (3) A person whose activity requires an application to degrade state waters under 75-5-303, MCA, and subchapter 7 of this chapter shall submit a degradation authorization fee with the application, as determined under ~~(3)(b)~~ and ~~(c)~~ (6) of this rule.

~~(c)~~ (4) A person who holds a permit, certificate, license, or other authorization required by rule under 75-5-201 or 75-5-401, MCA, shall pay to the department an annual permit fee as determined under ~~(3)(d)~~ (7) of this rule.

~~(3)(a)(i) (5) The permit application fee is the sum of the fees for the applicable parts or subparts listed in this subsection. Payment of the permit application fee is due upon submittal of the application. The fee schedule for new or renewal applications for a Montana pollutant discharge elimination system permit under subchapter 11 or 13 of this chapter, a Montana ground water pollution control system permit under subchapter 10 of this chapter, or any other authorization under 75-5-201, 75-5-301 or 75-5-401, MCA, or rules promulgated under these authorities, is set forth below as schedules I.A, I.B and I.C+. Payment of the permit application fee is due upon submittal of the application. For new applications under Schedules I.A or I.B, the annual fee from Schedule III for the first year must also be paid at the time of application.~~

~~Schedule I  
Application Fee per Discharge Point,  
Point Source, or Source at the Facility~~

<del>Publicly owned treatment works (POTW) or other domestic wastewater or potable water treatment plant</del>	
<del>Without significant industry *</del>	<del>\$ 250</del>
<del>With significant industry *</del>	<del>\$1000</del>
<del>Industrial</del>	
<del>Individual storm water/ground water/pit water</del>	<del>\$1000**</del>
<del>Noncontact cooling water</del>	<del>\$ 400</del>
<del>Wastewater:</del>	
<del>With any carcinogenic or toxic or radioactive substance at a level &gt;50% long term (chronic) standard</del>	<del>\$5000</del>
<del>Wastewater without any carcinogenic substance at a level &gt;50% long term (chronic) standard</del>	<del>\$2500</del>
<del>General Permits</del>	
<del>Feed lots, fish farms, suction dredges, construction dewatering, ARM 17.30.637(3)(a) authorizations</del>	<del>\$ 200</del>
<del>Produced water, cleanups, gravel washing, industrial stormwater, construction stormwater</del>	<del>\$ 400</del>

~~\* "Significant industry" means the POTW has a pretreatment program or receives discharge from a significant industrial user as defined in ARM 17.30.1402.~~

~~\*\* Multiple stormwater water points are limited to a maximum of 5 points.~~

The following tables replace the interlined text shown in existing (3)(a)(i) above.

Schedule I.A Application Fee for Individual Permits

Category	Amount <sup>(1)</sup>
Publicly owned treatment works - major.....	\$4,000
Privately owned treatment works - major.....	.4,500
Publicly owned treatment works - minor.....	.1,000
Privately owned treatment works - minor.....	.2,500
Ground water, domestic wastes.....	.1,200
Ground water, industrial or other wastes....	.1,500

<sup>(1)</sup> Per outfall, multiple storm water outfalls limited to a maximum of five outfalls.

Schedule I.B Application Fee for General Permits

Category	Amount <sup>(1)</sup>
Concentrated animal feeding operation, greater than 1,000 animal units.....	\$ 450
Concentrated animal feeding operation, less than 1,000 animal units.....	300
Construction dewatering.....	300
Fish farms.....	300
Produced water.....	450
Suction dredge.....	250
Sand and gravel.....	450
Domestic sewage treatment lagoon.....	500
Disinfected water.....	500
Petroleum cleanup.....	500
Storm water associated with construction, residential (single family dwelling).....	250
Storm water associated with construction, commercial or public.....	450
Storm water associated with industrial activities.....	500
Storm water associated with mining, oil and gas.....	500
Storm water municipal separate storm sewer system (MS4).....	1,500
Ground water remediation or dewatering.....	700
Ground water potable water treatment facilities.....	700
Other general permit, not listed above.....	400

(1) Per outfall, multiple storm water outfalls limited to a maximum of five outfalls.

Schedule I.C Application Fee for Other Activities

Category	Amount <sup>(1)</sup>
Short-term water quality standard, turbidity "318 authorization".....	\$150
Short-term water quality standard, remedial activities and pesticide application "308 authorization".....	250
Storm water no exposure certification.....	100
Storm water construction waiver.....	100
Federal Clean Water Act section 401 Certification.....	Varies <sup>(2)</sup>
Review plans and specification to determine if permit is necessary, pursuant to 75-5-402(2), MCA.....	½ Applicable Fee
Major amendment.....	Application Fee
Minor amendment, includes transfer of ownership.....	200

(1) Per outfall, multiple storm water outfalls limited to a maximum of five outfalls.

(2) Minimum fee is \$350, or 1% of gross value of proposed project, not to exceed \$10,000.

~~(ii) (a) An application fee for multiple discharge points is not required if there are multiple discharge points from the same source that have similar effluent characteristics, unless the discharges are to different receiving waters or stream segments, or result in multiple or variable (flow dependent) effluent limits or monitoring requirements.~~

~~(iii) An applicant for a minor permit modification that does not require public notice and will decrease or not change the impact of the discharge to state waters is not required to pay a fee under this section (3)(a).~~

(b) If a resubmitted application contains substantial changes causing significant additional review, the department may require an additional application fee to be paid before any further review is conducted. The additional fee must be calculated in the same manner as the original fee, and based

on those parts of the application that must be reviewed again because of the change. The department shall give written notice of the assessment within 30 days after receipt of the resubmittal and provide for appeal as specified in (10) below.

~~(b) (6) The degradation authorization fee is the sum of the fees for the applicable parts or subparts listed in this subsection. The fee schedule for new or renewal authorizations to degrade state waters under subchapter 7 of this chapter is set forth in Schedule II. Payment of the degradation authorization fee is due upon submittal of the applications. If an application for authorization to degrade state waters is denied, the department shall return any portion of the fee that it does not use to review the application. The fee schedule for new or renewal authorizations to degrade state waters under subchapter 7 of this chapter is set forth in Schedule II, as follows:~~

Schedule II

Review of Authorizations to Degrade

Domestic Sewage Treatment or Potable  
Water treatment plant \$2500

Industrial Activity Reviews  
With any carcinogenic or toxic or  
radioactive substance at a level  
>50% (chronic) standard \$5000  
Without any carcinogenic or toxic or  
radioactive substance at a level  
>50% (chronic) standard \$2500

Subdivisions  
1-9 lots \$ 120/lot  
10+ lots \$ 200/lot  
(maximum fee) \$5000/subdivision

The following table replaces the interlined text shown in existing (3)(b) above.

Schedule II. Review of Authorizations to Degrade

Category	Amount
Domestic sewage treatment .....	\$2,500 <sup>(1)</sup>
Industrial activity.....	5,000 <sup>(1)</sup>
Subdivision, 1-9 lots.....	120/lot
Subdivision, 10+ lots.....	200/lot <sup>(2)</sup>

<sup>(1)</sup> Per outfall, limited to a maximum of five falls.

<sup>(2)</sup> Maximum fee is \$5,000 per subdivision.

~~(e) (a)~~ For purposes of ~~(a) (5)~~ and ~~(b) (6)~~ above, if a resubmitted application or petition contains substantial changes potentially causing additional or different sources of pollution that require the application or petition to be reviewed again, the department may require an additional application fee to be paid before any further substantive review. The additional fee must be calculated in the same manner as the original fee, and based on those parts of the application that must be reviewed again because of the change. The department shall give written notice of the assessment within 30 days after receipt of the resubmittal and provide for appeal as specified ~~under (e) in (10)~~ below.

~~(d)(i) (7)~~ The annual permit fee is ~~the sum of the fees for the applicable parts or subparts listed in this subsection set forth in Schedules III.A and III.B. No annual fee is required for activities listed in Schedule I.C under (5) of this rule. This subsection (i) must be used to determine the total annual fee, unless the minimum fee determined under (ii) below is a higher amount. The annual permit fee is determined by applying Schedule III to the facility under permit:~~

~~Schedule III~~

~~Average Discharge Flow Rate Fee~~

~~Per Million Gallons of Wastewater Discharged Per Day on an Average Annual Basis, per Point Source Discharge~~

~~POTW or Other Domestic~~

~~Sewage or Potable Water Treatment Plant~~

~~Without significant industry \$2000~~

~~With significant industry \$2500~~

~~Industrials~~

~~Individual storm water/ground water/pit water \$2000\*~~

~~Noncontact cooling water \$ 500~~

~~Wastewater:~~

~~With any carcinogenic or toxic or radioactive substance at a level >50% long term chronic standard \$2500~~

~~Wastewater without any carcinogenic or toxic or radioactive substance at a level >50% long term chronic standard \$2000~~

~~General Permits~~

~~Feed lots, fish farms, suction dredges, construction dewatering, construction stormwater\* \$ 250~~

~~Produced water, cleanups, gravel~~

washing, industrial stormwater \$2000

\* Multiple stormwater points are limited to the 5 points yielding the highest fees.

(ii) The minimum annual permit fee to be charged per discharge point or point source at a facility regardless of the wastewater flow is set forth in Schedule IV, as follows:

Schedule IV  
Minimum Annual Fee per Discharge  
Point or Point Source

POTW or Other Domestic Sewage  
or Potable Water Treatment Plant  
Without significant industry \$ 250  
With significant industry \$1000

Industrials  
Individual storm water/ground water/pit water \$1000  
Noncontact cooling water \$ 250

Wastewater:  
With any carcinogenic or toxic or  
radioactive substance at a level  
>50% long term chronic standard \$2500  
Wastewater without any carcinogenic or  
toxic or radioactive substance at a level  
>50% long term chronic standard or with  
"No Discharge" permit requirements \$1000

General Permits  
Feed lots, fish farms, suction dredges,  
construction dewatering, construction  
stormwater \$ 250  
Produced water, cleanups, gravel  
washing, industrial stormwater \$ 400

The following tables replace the interlined text shown in (3)(d)(i) above.

Schedule III.A Annual Fee for Individual Permits

Category	Minimum Fee <sup>(1)</sup>	Fee Per Million Gallons of Effluent per Day (MGD)
Publicly owned treatment works - major	\$2,000	\$2,500
Privately owned treatment works - major	3,000	3,000 <sup>(2)</sup>

Publicly owned treatment works - minor	1,000	2,500
Privately owned treatment works - minor	750	3,000 <sup>(2)</sup>
Ground water, domestic wastes	750	3,000
Ground water, industrial or other wastes	1,500	3,000 <sup>(2)</sup>

<sup>(1)</sup> Per outfall, multiple storm water outfalls limited to a maximum of five outfalls.

<sup>(2)</sup> Except \$750 per MGD if effluent is noncontact cooling water.

Schedule III.B Annual Fee for General Permits

Category	Amount <sup>(1)</sup>
Concentrated animal feeding operation, greater than 1,000 animal units.....	\$300
Concentrated animal feeding operation, less than 1,000 animal units.....	250
Construction dewatering.....	250
Fish farms.....	250
Produced water.....	450
Portable suction dredges.....	200
Sand and gravel production.....	450
Domestic sewage treatment lagoon.....	500
Disinfected water.....	450
Petroleum cleanup.....	450
Storm water associated with construction, residential (single family dwelling).....	NA
Storm water associated with construction, commercial or public.....	450
Storm water associated with industrial activities.....	650
Storm water associated with mining, oil and gas.....	650
Storm water municipal separate storm sewer system (MS4).....	650
Ground water remediation or dewatering.....	450
Potable water treatment facilities.....	450
Other general permit, not listed above.....	350

<sup>(1)</sup> Per outfall, multiple storm water outfalls limited to a maximum of five outfalls.

~~(iii)~~ (a) A facility that consistently discharges effluent at less than or equal to one-half of its effluent limitations and is in compliance with other permit requirements, using the previous year's discharge data, is entitled to a 25% reduction in its annual permit fee. Proportionate reductions in annual fee of up to 25% may be given to facilities that consistently discharge effluent at levels between 50% and 100% of their permit effluent



limitations. The annual average of the percentage of use of each parameter limit will be used to determine an overall percentage. A new permittee is not eligible for fee reduction in its first year of operation. A permittee with a violation of any effluent limit during the previous year is not eligible for fee reduction.

(iv) remains the same, but will be renumbered (b).

~~(4)~~ (8) If a person assessed a fee under ~~(3)~~ of this rule fails to pay the fee within 90 days after the due date for payment, the department may:

(a) and (b) remain the same.

(5) remains the same, but is renumbered (9).

~~(6)~~ ~~(a)~~ (10) Persons assessed a fee under ~~(3)~~ of this rule, may appeal the department's fee assessment to the board within 20 days after receiving written notice of the department's fee determination. The appeal to the board must include a written statement detailing the reasons why the permit holder or applicant considers the department's fee assessment to be erroneous or excessive.

~~(b)~~ (a) If part of the department's fee assessment is not in dispute in an appeal filed under ~~(a)~~ (10) above, the undisputed portion of the fee must be paid to the department upon written request of the department.

(c) remains the same, but is renumbered (b).

AUTH: 75-5-516, MCA

IMP: 75-5-516, MCA

REASON: The Montana Water Quality Act requires that the Board of Environmental Review adopt fees that are sufficient to recover the cost of issuing permits, licenses and other authorizations issued by the Department, as well as the administrative costs of operating the program, including monitoring, inspections, compliance assistance and enforcement. In addition to the 10 full time employees (FTEs) in the permits program, the fees fund staff in the Enforcement Division and in the Planning, Prevention and Assistance Division.

Fees are due on March 1 of each year to support the fiscal year (the prior July 1 to the following June 30). For example, bills due March 1, 2002, will support FY2002 (July 1, 2001 to June 30, 2002). If adopted by the Board, the proposed fees would be used by the Department in January 2002 when it prepares bills for FY2002.

The proposed fees would generate \$479,225 in increased funds for the program in FY2002, for a total FY2002 program funding of \$982,553. The Department estimates that several hundred permittees would be affected, including holders of existing permits and applicants for new permits and authorizations.

The current fee rules were adopted by the Board in January 1994. In 1996 the Department implemented a computer-based system to track and monitor the fee program. In 1998 the Department requested that the Board amend fees to cover increased program costs. Concurrently, however, voters adopted a citizen initiative (CI-75) that made it questionable whether the Board could adopt the fee amendments. No action was taken in 1998, and the Department used a budget surplus to fund the program. The surplus has been eradicated at a rate of about \$300,000 per year and is no longer available.

The current fee proposal is necessary to incorporate components of the 1998 proposal together with budget adjustments passed by the 2001 legislature, including four additional full time employees (FTEs). In addition to increasing revenue, the proposed fee amendments are necessary to simplify the fee schedule tables, to institute fees for activities such as short-term water quality standards and pesticide authorizations, and to institute fees for upcoming revisions to the construction stormwater permit process (Notices of Intent as established by the 2001 legislature and Phase II stormwater regulations as mandated under the federal Clean Water Act). The proposed amendments delete differential fees for publicly owned treatment works. In 1994, when current fees were adopted, the Department had proposed to assume delegation from the U.S. Environmental Protection Agency under the federal Clean Water Act to administer the pretreatment program. Since that time, these plans have been dropped.

Under the fee rules, permit fees are assessed in three different categories: application fees, which are paid at the time of application for a new permit or every five years for renewals; degradation authorization fees; and annual fees. The proposed amendments contain significant increases in application fees and annual fees, as described below.

The proposed increases to application fees are shown in the new Schedules I.A, I.B, and I.C. The increases are necessary to cover the cost of reviewing and processing applications, developing effluent limits, and informing the public and other agencies of these activities. Since 1994 the complexity of issuing a wastewater discharge permit has increased exponentially. Some of the factors that must be addressed in issuing a permit include: development of total maximum daily loads (TMDLs); compliance with the federal court order in Friends of the Wild Swan v. EPA (CV 97-35-M-DWM, District of Montana, Missoula Division); delineation of mixing zones; and compliance with nondegradation requirements, pretreatment requirements, the Montana Environmental Policy Act (MEPA), and additional requirements for public noticing permits and other activities. These additional requirements have resulted in a 2 to 3-year delay in issuing and renewing

permits. The additional FTEs are intended to help alleviate this situation.

The proposed increases to annual fees are shown in the new Schedules III.A and III.B. Annual fees cover the cost of administering permits during their 5-year term. Permit administration includes: review and recording of monthly discharge monitoring reports (DMR); assessing compliance; issuing violation notices; conducting annual inspections; and collecting water quality samples. In many cases, the annual fee was not sufficient to cover the Department's cost for analytical services alone. The proposed annual fees are necessary to cover all of the costs of permit administration. The proposed deletion of the former Schedule IV is a formatting change only, and the provisions of the former Schedule IV are incorporated in the new Schedules III.A and III.B.

In 1998 the Board's ground water regulations were modified to require a discharge permit for new, modified, or non-compliant public wastewater systems. No additional funding or staff resources were added to address the additional workload. The existing fees do not cover the cost of developing and tracking these permits. Therefore, the proposed amendments contain significant fee increases for this category. These increases are necessary to address the additional analysis and monitoring expenses associated with ground water. Individual ground water permit fees have been included with surface water fees.

Finally, the Board is proposing fees for other activities, including section 308 authorizations to exceed water quality standards for pesticide application and emergency remedial activities, and section 318 water quality standards for turbidity. The number of 308 authorizations has increased significantly as a result of the Federal Ninth Circuit Court of Appeals ruling that determined a National Pollutant Discharge Elimination System (NPDES) permit was necessary for these activities. A significant amount of staff resources has been dedicated to this issue. The proposed fees are necessary to cover these costs.

6. Concerned persons may submit their data, views or arguments concerning the proposed action either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana, 59620-0901, faxed to (406) 444-4386 or emailed to the Board Secretary at "ber@state.mt.us", to be received no later than 5:00 p.m. January 3, 2002. To be guaranteed consideration, the comments must be postmarked on or before that date.

7. Thomas G. Bowe, attorney for the Board, has been designated to preside over and conduct the hearing.

8. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA, underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to the Board Secretary at "ber@state.mt.us" or may be made by completing a request form at any rules hearing held by the Board.

9. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

BOARD OF ENVIRONMENTAL REVIEW

By: Joseph W. Russell  
JOSEPH W. RUSSELL, M.P.H.,  
Chairperson

Reviewed by:

Jim Madden  
JIM MADDEN, Rule Reviewer

Certified to the Secretary of State, November 26, 2001.